IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.8493 OF 2005

The State of Maharashtra ...Applicant

Vs.

Hasam Haji Majid Devani & Ors. ...Respondents

Shri A.S.Shitole, A.P.P for the Applicant.
Shri R.M. Nakhwa for the Respondents.

CORAM : A. S. OKA, J.
DATE : OCTOBER 13, 2006.

P.C.:

1. Heard the learned A.P.P for the State and Shri Nakhwa appearing for the Respondents. The learned Trial Judge has acquitted the Respondents of the offences under section 7(i) read with section 2(ia)(a), 2(ia)(m), 2(ia)(a)(f)(b) of the Prevention of Food Adulteration Act, 1954 punishable under section 16 and 17 and 44(a)(c) of Prevention of Food Adulteration Act, 1954.

2. The learned A.P.P submitted that the learned Trial Judge committed an error by holding that Rules 14 and 16 of the Food Adulteration Rules were not complied by the Food Inspector. He submitted that there was substantial compliance with section 13 of the Food Adulteration Act. He submitted that the consent obtained under section 20(1) of the Food Adulteration

Act was a valid consent. His contention is that report of the Public Analyst is not properly interpreted by the learned Trial Judge.

3. I have considered the submissions. The learned Judge has recorded a finding that there is non-complaince with Rule 14 of the Prevention of Food Adulteration Rules. He has referred to the evidence led by the prosecution in that behalf. The learned Judge has observed that in memorandum at Exhibit 51 and in the complaint, the procedure followed for weighing the sample is not mentioned. It is pointed out that the instrument which was used for weighing the sample is also not mentioned. It is found that the plastic bag was not cleaned before placing the sample inside the plastic bag.

4. The learned Judge after examination of evidence found that no evidence was forthcoming that polythene bags were made airtight. The learned Judge held that there was no evidence to show that before keeping the sample in the container, the same was cleaned. The learned Judge has considered the evidence of P.W.1 and has come to conclusion that he did not clean the plastic bags before collecting the samples.

5. On the basis of evidence on record, the learned Judge has recorded a finding that the original sanction was confined to offences punishable section 7(i) read with section 2(ia)(a), 2(ia)(m) punishable under section 16 and 17 of the said Act. However, there was no sanction for the additional charge for the offences punishable under section 2(ia)(f)(d) and Rule 44(a) and (c) of the Act.

6. The learned Judge has recorded a finding that the report of the Public Analyst shows that analysis was made only on microscopic examination and no chemical test was conducted. On this ground, it is held that the Public Analyst report cannot carry any weight.

7. After perusing the impugned judgment and order and after considering the submissions of the learned A.P.P for the State, I find that view taken by the learned Judge is a possible view which could have been taken on the basis of evidence on record. No case is made out for grant of leave. Accordingly, Application No.8493 of 2005 is rejected.

JUDGE